

**REMARKS**

The Office action has been carefully considered. The Office action rejected claims 1-7, 10-14, and 44 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,623,586 to Gaisford et al. ("Gaisford") in view of U.S. Patent No. 5,155,847 to Kirouac et al. ("Kirouac"). Further, the Office action rejected claims 8-9, 15-22, 24, 27-42, and 45 as being unpatentable over Gaisford and Kirouac in view of U.S. Patent No. 5,732,266 to Moore et al. ("Moore"). Applicants respectfully disagree and traverse.

By present amendment, claims 1, 15, and 44 have been amended for clarification and not in view of the prior art. Applicants submit that the claims as filed were patentable over the prior art of record, and that the amendments herein are for purposes of clarifying the claims and/or for expediting allowance of the claims and not for reasons related to patentability. Reconsideration is respectfully requested.

Applicants thank the Examiner for the interview held (by telephone) on March 23, 2004. During the interview, the Examiner and applicants' attorney discussed the claims with respect to the prior art. The essence of applicants' position is incorporated in the remarks below.

Prior to discussing reasons why applicants believe that the claims in this application are clearly allowable in view of the teachings of the cited and applied references, a brief description of the present invention is presented.

The present invention is generally directed towards at least three significant concepts that are clearly not taught or suggested by the prior art of record, namely

1) assigned programs, 2) assigned programs that are advertised as available for execution prior to their installation, and 3) published programs. Further, as generally recited in the claims, the assigned and published programs are deployed via an association with a policy recipient, and/or via an advertise script, neither of which is taught or suggested by the prior art.

As described in the specification, an assigned program is one that an administrator or the like, via policy data, declares as mandatory for a policy recipient to have, whether that policy recipient is a computer or a user. Note that by mandatory, it is meant that the policy recipient has no option to override the assignment (however it is possible for one policy such as that of a different administrator to supersede another policy, and thus configure the computer system in some other manner). At each logon event (for a user) or network connection event (for a computer), or at some other time such as periodically, the computer system is automatically configured according to the policy data to have the assigned programs made available for execution on the computer system. Because the computer will be reconfigured as needed according to the policy data at the next time of program deployment, any change made to an assigned program (e.g., removal of the program by a user) will be automatically corrected, e.g., an assigned program that was removed will be automatically made available for execution at the next time of deployment. Assigned programs are thus resilient.

Another significant concept that the prior art of record fails to teach or suggest is the concept of advertising, in which assigned programs may be made available for execution, before they are actually installed on the machine. In other

words, when a program is advertised as available for execution prior to its installation, there is some data on the machine that makes the program, in fact, executable, even though at least some of the code that is needed to execute the program is not yet actually installed on that machine. Advertising, as defined in the specification, is a concept that is much more than simply letting a user know that an application can be installed, but rather refers to pre-configuring a local computer system with the information that the system needs to execute program code. With advertised programs, any needed installation occurs automatically, as part of the execution process. Once installed, an assigned program is present on a system, and, thus, need not be advertised again unless and until that program is altered in some way (e.g., uninstalled or overwritten), whereby at the time of next deployment the assigned program will again be advertised as available for execution.

In general, advertising is accomplished by receiving and locally maintaining information about the program, (e.g., registry settings, icon data, file or object associations and so forth) prior to installation of the code required to run the program. For example, a shortcut that looks like a shortcut to any other executable program may be made to appear on the desktop and/or Start Menu of a computer system, even though the code that executes the program has not yet been installed on the computer system, and may well not be installed until actually needed to execute. Similarly, registry entries may be written to a system so that when execution is needed, (e.g., a file with a registered extension is double-clicked for opening), a corresponding program identity may be determined via the registry, whereby the appropriate program code may be automatically installed and then

automatically executed. In other words, when execution is requested for an advertised program that is not already installed, the program (any needed code) is installed on demand, and, thereafter, automatically executed. Advertising, thus, provides substantial benefits over the prior art of record, because among other things, programs are made available for execution, but not installed until execution is actually requested, thus avoiding unnecessary installations (which are expensive) for policy recipients that never request execution.

A third difference from the prior art of record is with respect to published programs. Published programs are those that the associations/policy data indicates as optional (*e.g.*, specifically allowable but not mandatory) for a user and/or machine to have. Unlike assigned programs (including assigned programs that are advertised), published programs essentially have no presence on a machine (no registry entries, shortcuts, *etc.*) until activated in some manner, such as by requesting that a file be opened when that file has a file extension that corresponds to a published program, or requesting a published object. Published programs are not resilient like assigned programs, *e.g.*, they may be removed or otherwise changed without being automatically restored.

Note that the above description is for example and informational purposes only, and should not be used to interpret the claims, which are discussed below.

Turning to the claims, claim 1, as amended, recites a method of deploying a plurality of programs to a policy recipient, comprising, maintaining an association between each program and the policy recipient, at least one association corresponding to a program that is assigned as mandatory for the policy recipient

to have on a computer system associated with that policy recipient, and at least one other association corresponding to a program that is published as optional for the policy recipient to have on the computer system associated with that policy recipient, determining a time for deploying each assigned program to the policy recipient and making that program available to the policy recipient at that time, and deploying each published program to the policy recipient when the published program is activated via the computer system.

The Office action rejected claim 1 as unpatentable over Gaisford in view of Kirouac. More specifically, the Office action contends that Gaisford teaches a method of deploying a plurality of programs to a policy recipient. Column 9, lines 45-65 of Gaisford are referenced. Further, the Office action contends that Gaisford teaches maintaining an association between each program and the policy recipient. Column 9, lines 45-65 of Gaisford are referenced. Still further, the Office action contends that Gaisford teaches determining a time for deploying each assigned program to the policy recipient and making that program available to the policy recipient at that time, and deploying each published program to the policy recipient when the published program is activated via the computer system. Column 9, lines 33-37 and column 15, line 29 to column 16, line 14 of Gaisford are referenced.

The Office action concedes that Gaisford does not teach that at least one association corresponding to a program that is assigned as mandatory for the policy recipient to have on a computer system associated with that policy recipient, and at least one other association corresponding to a program that is published as optional for the policy recipient to have. However, the Office action contends that

distinguishing mandatory and optional programs is well known in the art and cites Kirouac as an example. The Office action concludes that the recitations of claim 1 would have been obvious to a person skilled in the art at the time the invention was made to combine the teachings of Gaisford and Kirouac because it would reduce licensing cost and storage space on user's computers of programs that are not required or used. Applicants respectfully disagree.

To establish *prima facie* obviousness of a claimed invention, all of the claim recitations must be taught or suggested by the prior art; (*In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)), and "all words in a claim must be considered in judging the patentability of that claim against the prior art;" (*In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)). Further, if prior art, in any material respect teaches away from the claimed invention, the art cannot be used to support an obviousness rejection. (*In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed Cir. 1997)).

The present invention distinguishes between mandatory assigned programs, optional assigned programs, and optional published programs. As such (as was described in general above), claim 1 recites a method of deploying a plurality of programs to a policy recipient, wherein the plurality of programs may fall into one of these three designations of programs. The Office action contends that designating programs as mandatory or optional is well known in the art. Applicants specifically disagree with this contention, but point out that the claims also refers to a different designation of programs, e.g. programs designated as assigned or published. The Office action does not address this distinction between programs as being taught

by any prior art. Rather, the Office action only distinguishes between optional programs and mandatory programs. The Office action seems to not fully appreciate that programs can be distinguished between optional and mandatory as well as assigned and published. Thus, four distinct programs may be distinguished: assigned as mandatory, assigned as optional, published as mandatory and published as optional. As such, applicants submit that claim 1 is patentable over the prior art of record for at least this reason.

Further, claim 1 is not directed to the mere concept of distinguishing programs between assigned and published, but rather maintaining an association between each program (whether the program is assigned as mandatory, assigned as optional, or published) and the policy recipient and then deploying the programs according to the maintained association. Nowhere in the prior art of record does any reference teach, much less even suggest, a policy dealing with assigned and published programs.

Further, as a matter of law, obviousness may not be established using hindsight obtained in view of the teachings or suggestions of the applicants. *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1551, 1553, 220 USPQ 303, 311, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). To guard against the use of such impermissible hindsight, obviousness needs to be determined by ascertaining whether the applicable prior art contains any suggestion or motivation for making the modifications in the design of the prior art article in order to produce the claimed design. The mere possibility that a prior art teaching could be modified or combined such that its use would lead to the particular limitations recited in a

claim does not make the recited limitation obvious, unless the prior art suggests the desirability of such a modification. See *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no motivation to combine the references of Gaisford and Kirouac because Kirouac specifically teaches a relationship between a central computer system and *software* that is used in remote computer systems. See column 3, lines 27-30 of Kirouac. That is, Kirouac does not teach distinguishing programs based on a relationship to the remote computer itself (or even a remote user), but rather simply to the software that is installed on a remote computer. As such, a mandatory program update is installed (*i.e.*, modifies or replaces the corresponding software in need of an update) regardless of the computer that it is being installed on. See column 3, line 66 to column 4, line 1 of Kirouac. Thus, to combine the teachings of Kirouac with the teachings of Gaisford would defeat the purpose of the teachings of both Kirouac and Gaisford in that the resulting system would designate some programs as optionally mandatory (a remote computer in need of an upgrade from the teachings of Kirouac may not be allowed to be upgraded because the remote computer is not on the distribution list as taught by Gaisford) or mandated as optional (a remote computer on the distribution list as taught by Gaisford may receive indication that an optional program update may be installed as taught by Kirouac). As such, the two references teach away from each other as the concepts do not lend each other to a congruent combination toward mutually beneficial ends.



Even if combined, (applicants specifically deny any permissible way of combining the references and present this example scenario strictly for the purposes of argument), the resulting system would not allow individual relationships between programs and policy recipients. That is, both systems in Gaisford and Kirouac are concerned with the relationship between the programs on the remote computer and the designation of the programs to be installed. Put another way, both Kirouac and Gaisford teach a method that only allows for all programs to be updated regardless of the machine in which they reside. Thus, neither Gaisford nor Kirouac teach maintaining a an association between each *program* and the *policy recipient* as recited in claim 1. Applicants submit that claim 1 is patentable over the prior art of record for at least these reasons.

With regard to claims 2-7 and 10-14, these claims depend either directly or indirectly from claim 1. Applicants submit that claims 2-7 and 10-14 are patentable because they contain the patentable limitation of claim 1 discussed above. In addition to containing the patentable limitations of claim 1, dependent claims 2-7 and 10-14 are also separately patentable over Gaisford and Kirouac for their other recited limitations.

For example, claim 5 recites the method of claim 1 further comprising, detecting a request to run a selected one of the assigned programs, accessing the registry to locate the selected assigned program, and executing the selected assigned program. Neither Gaisford nor Kirouac disclose assigned programs as distinguished from published programs. As such, neither Gaisford nor Kirouac can

possibly teach accessing the registry to locate the selected assigned program, and executing the selected assigned program.

Claims 8 and 9, which ultimately depend from claim 1, were rejected as being unpatentable over Gaisford and Kirouac in further view of Moore. Specifically, the Office action concedes that Gaisford and Kirouac do not teach making the program available for execution prior to installation of the program code. However, the Office action contends that Moore teaches providing application launching information on a user computer such that it enables an application to be available for execution prior to installation. Column 1, lines 55-60 and column 2, lines 52-54 of Moore are referenced. The Office action then concludes that the recitations of claims 8 and 9 would have been obvious to a person skilled in the art at the time the invention was made because the combination of these three references would have enabled automatically installing software when the user wants to use the application. Applicants respectfully disagree.

Claims 8 and 9 recite advertising a program as available for execution prior to installation of program code used to execute the program on the computer system. Advertising, as discussed above and in the specification, is a concept that is much more than simply letting a user know that an application can be installed, but rather refers to pre-configuring a local computer system with the information the system needs to execute program code. With advertised programs, any needed installation occurs automatically, as part of the execution process. Simply executing an installation in response to a request as taught by Moore is not the

same as advertising that a program is available prior to execution. Applicants submit that claims 8 and 9 are patentable for at least for these additional reasons.

Turning to the next independent claim, claim 15, as amended, recites a method of automatically deploying an assigned program to a policy recipient, comprising, generating a script having information therein corresponding to the assigned program, associating the script with a policy, applying the policy to the policy recipient by processing the script at a computer associated with the policy recipient to advertise the assigned program as available for execution by the policy recipient prior to installation of program code needed to execute the program, wherein the program is installed such that the program is installable on demand in response to a request to execute the program.

The Office action rejected claim 15 as being unpatentable over Gaisford, Kirouac, and Moore for reasons similar to the reasons given for the rejection of claims 1 and 8. Applicants respectfully disagree and submit that claim 15 should be examined on its own merits.

Claim 15 recites, among other things, advertising an assigned program as available for execution by the policy recipient prior to installation of the program code needed to execute the program. As discussed above, advertising is a concept that is much more than simply letting a user know that an application can be installed, but rather refers to pre-configuring a local computer system with the information the system needs to execute program code. With advertised programs, any needed installation occurs automatically, as part of the execution

process. Simply executing an installation in response to a request is not the same as advertising that a program is available prior to execution.

Further, claim 15 recites generating a script having information therein corresponding to the assigned program, associating the script with a policy, applying the policy to the policy recipient by processing the script. Moore instead teaches storing launching information about a program. Even if one were to accept the Office action's contention that launching information in Moore teaches a script as used in the present invention (which applicants deny), the teachings of Moore still fall significantly short of disclosing associating the script with a policy, applying the policy to the policy recipient by processing the script. Moore simply teaches storing launching information with an executable program and does not even come close to recognizing or appreciating using the launching information in conjunction with a policy for distributing programs across a network.

For at least these reasons, applicants submit that claim 15, and dependent claims 16-22, by similar analysis, are patentable over the prior art of record.

Turning to the next independent claim, claim 24 recites a system for deploying programs to policy recipients, comprising, a centralized store of policy objects, at least one of the policy objects having an advertise script associated therewith, the advertise script including program information of at least one program for assigning to policy recipients, and a mechanism for applying policy objects to a policy recipient, wherein at least one of the policy objects applied to that recipient has the advertise script associated therewith, the mechanism processing the script to advertise at least one assigned program to the policy

recipient such that the assigned program is advertised as available for execution by the policy recipient prior to installation of program code needed to execute the program.

The Office action rejected claim 24 as being unpatentable over Gaisford, Kirouac, and Moore for reasons similar to the reasons given in the rejection of claims 1, 8, and 15. Applicants respectfully disagree and submit that claim 24 should be examined on its own merits.

Claim 24 recites, among other things, a centralized store of policy objects, at least one of the policy objects having an advertise script associated therewith, the advertise script including program information of at least one program for assigning to policy recipients. As discussed above, advertising is a concept that is much more than simply letting a user know that an application can be installed, but rather refers to pre-configuring a local computer system with the information the system needs to execute program code. With advertised programs, any needed installation occurs automatically, as part of the execution process. Simply executing an installation in response to a request is not the same as advertising that a program is available prior to execution.

Further, claim 24 recites a mechanism for processing the script to advertise at least one assigned program to the policy recipient such that the assigned program is advertised as available for execution by the policy recipient prior to installation of program code needed to execute the program. In contrast, Moore teaches, generally, storing launching information about a program. Even if one were to accept the Office action's contention that launching information in Moore

teaches a script as used in the present invention (which applicants deny), the teachings of Moore still fall significantly short of disclosing a mechanism for processing the script to advertise at least one assigned program to the policy recipient such that the assigned program is advertised as available for execution by the policy recipient prior to installation of program code needed to execute the program. Moore simply teaches storing launching information with an executable program and does not even come close to recognizing or appreciating using the launching information in conjunction with a policy for distributing programs across a network.

For at least these reasons, applicants submit that claim 24, and dependent claims 27-34, by similar analysis, are patentable over the prior art of record.

Turning to the next independent claim, claim 35 recites a method comprising, maintaining deployment information in association with a policy recipient, the deployment information comprising, 1) assigned program data, the assigned program data identifying assigned programs that upon a deployment event are made available to the policy recipient via automatic deployment to a computer system associated with the policy recipient, 2) published program data, the published program data identifying published programs that are published to the policy recipient for optional deployment to the computer system associated with the policy recipient, each published program deployed upon a detected need for that published program, automatically configuring a computer system associated with the policy recipient upon a deployment event, to have the assigned programs

available for execution, and configuring the computer system with a selected published program upon a detected need for that selected published program.

Again, the Office action rejected claim 35 as being unpatentable over Gaisford, Kirouac, and Moore for reasons similar to the reasons given for the rejection of claims 1, 8, and 15. Applicants respectfully disagree and submit that claim 35 should be examined on its own merits.

As was discussed above, the present invention distinguishes between mandatory assigned programs, optional assigned programs, and published programs (whether they are optional or mandatory). As such (as was described in general above), claim 35 recites a method for configuring a computer in two situations: automatically in the case of assigned programs and upon detection of the need in the case of published programs. Nowhere in the prior art of record can there be found a teaching that distinguished assigned programs from published programs regardless of whether the assigned or published programs are also optional or mandatory.

Further, claim 35 is not directed to the mere concept of distinguishing programs between assigned and published, but rather maintaining an association between each program (whether the program is assigned as mandatory, assigned as optional, or published) and the policy recipient and then deploying the programs according to the maintained association. Nowhere in the prior art of record does any reference teach, much less even suggest, a policy dealing with assigned and published programs.

For at least these reasons, applicants submit that claim 35, and dependent claims 36-42, by similar analysis, are patentable over the prior art of record.

Turning to the last independent claims, claims 44 and 45 generally recite methods embodied in a computer-readable medium for configuring a computer of a policy recipient in two situations: automatically in the case of assigned programs and upon detection of the need in the case of published programs. Applicants submit that claims 44 and 45 are allowable for at least the reasons detailed above with respect to claims 1 and 35. Nowhere in the prior art of record does any reference teach, much less even suggest, a policy dealing with assigned and published programs.

For at least these additional reasons, applicants submit that all the claims are patentable over the prior art of record. Reconsideration and withdrawal of the rejections in the Office action is respectfully requested and early allowance of this application is earnestly solicited.

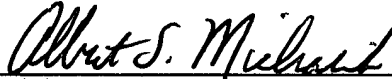


### CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that claims 1-22 and 24, 27-42, and 44-45 are patentable over the prior art of record, and that the application is good and proper form for allowance. A favorable action on the part of the Examiner is earnestly solicited.

If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney at (425) 836-3030.

Respectfully submitted,



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